

REMARKS

Applicants respectfully request reconsideration of the newly presented rejections of the claims of the instant application in view of the amendments above and the following remarks.

I. STATUS OF THE CLAIMS

Upon entry of the foregoing amendments, claims 24, 26, 28-38, 40-49, 51, and 52 will be presently pending and under consideration. Claims 1-23, 25, 27, 39, and 50 have been previously cancelled, without prejudice. Applicants reserve the right to file a continuation or divisional application on any non-pursued subject matter.

Claims 24 and 44 are amended to reintroduce the claim element dialkyl(ene) ethers into the recited Markush groups. Support for these amendments is found in the original specification as filed at least at page 3, line 23 through page 4, line 5. Claim 24 is also amended for purposes of clarity with respect to the recited melting point range.

No new claims are added.

No new matter is presented.

II. SUMMARY OF THE INVENTION AS CLAIMED

One aspect of the claimed subject matter as presently amended is directed to a wax dispersion with an average particle size of 0.5 to 100 μm comprising (a) 10-75% of a wax phase with a melting point in the range of above 25 to about 50°C, comprising at least one oil or wax component selected from the group consisting of dialkyl(ene) ethers, dialkyl(ene) carbonates, dicarboxylic acids, hydroxyfatty alcohols and mixtures thereof, and at least one emulsifier, and (b) a water phase (claims 24, 26 and 28-35). Another aspect of the claimed invention as currently amended is drawn to a wax dispersion comprising (a) 10-25% of a wax phase having a melting point in the range of about 35 to about 50°C and (b) 75-90% of a water phase (claims 36-38 and 40-43). Still another aspect of the claimed subject matter as presently amended is directed to a

process for the production of such wax dispersions (claims 44-49). Yet another aspect of the invention as claimed is directed to a body care preparation comprising such wax dispersions (claims 51-52).

III. REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 24, 26, 28-38, 40-43, 51, and 52 are patentable over Ansmann et al. (U.S. Patent No. 6,365,168) in view of Fogel (U.S. Patent No. 5,840,285) and any of Banowski et al. (DE 10058224), Bruning et al. (WO/2001/058417), or Baumoller et al. (WO/2002/056841). Ansmann relates to compositions comprising (1) pearlescent waxes with an average particle size of 12-14 μm comprising dialkyl ethers, (2) cationic polymers, and (3) emulsifiers. Fogel discloses dermatological compositions comprising esters of fumaric and maleic acids. While the Examiner acknowledges that Ansmann does not disclose that the wax phase has a melting point between 25 and 50°C, the Examiner states that Fogel discloses that cosmetic solids ideally melt at body temperature, and that it would have been obvious to select the ideal melting point for the solid phase. Applicants respectfully traverse this rejection at least because Fogel does not disclose or suggest to one skilled in the art how to modify the composition of Ansmann to obtain the presently claimed composition and melting point range of the recited wax phase.

Applicants respectfully submit that the wax phase of the compositions disclosed by Ansmann have a melting point above 50°C. The Examiner states that, according to the instant specification, the dialkyl ether and emulsifier disclosed by Ansmann are part of the wax phase. Here, Ansmann discloses compositions comprising 1% by weight of distearyl ether (i.e., dialkyl ether) and 15% by weight of lauryl glucoside (i.e., emulsifier). Applicants submit that the melting point of distearyl ether is about 64°C, and that the melting point of lauryl glucoside is about 77°C. In turn, the wax phase disclosed by Ansmann would necessarily have a melting point above 50°C.

Applicants submit that Fogel does not teach or suggest to one skilled in the art a composition analogous to that disclosed by Ansmann having the claimed melting point range. Applicants respectfully reassert that Fogel is an improper reference to support

the present obviousness rejection, and cannot cure the deficiency of Ansmann. More specifically, Fogel refers to the ideal physical properties of a cosmetic ester. Indeed, Fogel relates specifically to esters, which are not recited by the presently claimed invention. In the Office Action dated August 28, 2009, the Examiner stated that Fogel “indicates only that an ideal physical property of cosmetics (i.e. a melting point near body temperature) has been difficult to achieve in esters” and that “[t]here is no implication that the physical properties are not similarly desirable in other oily/waxy cosmetic substances.”

Applicants submit that such melting points have also been difficult to achieve in the instantly claimed wax phase. Indeed, as noted above, Ansmann does not disclose or suggest the claimed wax phase having the recited melting point. Fogel does not fill this gap. “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” MPEP § 2145. Here, while Fogel may disclose how achieve an ester composition with a melting point near body temperature, Fogel in no way teaches or suggests how to modify the composition of Ansmann to achieve the claimed melting point range.

Applicants respectfully submit that Bruning, Baumoller, and Banowski do not cure the above-referenced deficiency. With respect to Baumoller, that reference states that the oil phase is preferably liquid at 20 °C. See, e.g., Baumoller at ¶¶ 0042-0049. Furthermore, Baumoller’s specific examples disclose compositions comprising polyglycerol poly-12-hydroxystearate (liquid at room temperature), polysorbate 20 (liquid at room temperature), lauryl glucoside (melting point of 77 °C), glycerol stearate (melting point of 55 °C), and cocoglyceride di-n-octyl carbonate (liquid at room temperature). According to the examples at ¶ 0135 of Baumoller, the compositions comprise 65.3% by weight of components liquid at room temperature, and about 8.3% by weight of components with a melting point well above 50 °C. Thus, Applicants respectfully submit that the overall melting point of the wax phase (i.e., wax, oil, and emulsifiers) would necessarily be below 25 °C.

Moreover, Baumoller does not disclose wax dispersion particle sizes falling within the claimed range of 0.5 to 100 µm. Similarly, Bruning and Banowski disclose

emulsions with a particle size below the presently claimed range. With respect to Bruning, the appearance of the disclosed microemulsions is “clear,” which is a result of the small particle size of the dispersed emulsion droplets being under 300 nm. See Bruning, ¶0002, Table 1. With respect to Banowski, the disclosed emulsions have a particle size below 500 nm. See Banowski, claim 1.

Likewise, claims 44-49 are patentable over Ansmann in view of Fogel and any of Banowski, Bruning, or Baumoller, and further in view of Bucheler et al. (U.S. Patent No. 4,996,004). The Examiner acknowledges that Ansmann and Fogel fail to teach the claimed production method, but states that Bucheler discloses a preparation method for stable cosmetic dispersions of organic substances in water. Applicants respectfully traverse this rejection for at least the reasons discussed above; that is, none of the secondary references disclose or suggest to one skilled in the art how to modify the process of Ansmann to obtain the presently claimed composition and melting point range of the recited wax phase.

Thus, Applicants submit that one skilled in the art in possession of the cited references would be without a teaching or suggestion as to how to achieve the presently claimed wax dispersions having an average particle size of 0.5 to 100 μm comprising a wax phase with a melting point in the range of from above 25°C to about 50°C. Accordingly, the Examiner is respectfully requested to withdraw the instant rejection.

CONCLUSION

In view of the abovementioned amendments and remarks Applicants respectfully assert that this application is now in condition for allowance. The Examiner is invited to contact the undersigned counsel in order to further the prosecution of this application in any way.

Respectfully submitted,

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